

# Order

Michigan Supreme Court  
Lansing, Michigan

November 7, 2006

Clifford W. Taylor,  
Chief Justice

ADM File No. 2005-36

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Proposed Amendment of  
Rules 7.204 and 7.205 of  
the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Rules 7.204 and 7.205 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated in underlining and deletions are indicated in strikeover.]

## Rule 7.204 Filing Appeal of Right; Appearance

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For purposes of subrules (A)(1) and (A)(2), “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(1) [Unchanged.]

(2) An appeal of right in a criminal case must be taken

(a) in accordance with MCR 6.425~~(F)~~(G)(3);

(b) within 42 days after entry of an order denying a timely motion for the appointment of a lawyer pursuant to MCR 6.425~~(F)~~(G)(1);

(c) within 42 days after entry of the judgment or order appealed from; or

(d) within 42 days after the entry of an order denying a motion for a new trial, for ~~judgment~~ directed verdict of acquittal, or ~~for resentencing to correct an invalid sentence~~, if the motion was filed within the time provided by in MCR 6.419(B), MCR 6.429(B)(4), or MCR 6.431(A)(4), as the case may be.

A motion for rehearing or reconsideration of a motion mentioned in subrules (A)(1)(b) or (A)(2)(d) does not extend the time for filing a claim of appeal, unless the motion for rehearing or reconsideration was itself filed within the 21- or 42-day period.

(3) [Unchanged.]

(B)-(H)[Unchanged.]

#### Rule 7.205 Application for Leave to Appeal

(A) Time Requirements. An application for leave to appeal must be filed within

- (1) 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule; or
- (2) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period.

For purposes of ~~this rule~~ subrules (A)(1) and (A)(2), “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(B)-(E)[Unchanged.]

(F) Late Appeal.

(1)-(3)[Unchanged.]

- (4) The limitation provided in subrule (F)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an application for leave to appeal within 21 days after the trial court decides a motion for a new trial, for directed verdict of acquittal, to withdraw a plea, or to correct an invalid sentence, if the motion was filed within the 6-month period prescribed time provided in MCR 6.310(C), MCR 6.419(B), MCR 6.429(B), and MCR 6.431(A), or if

(a)-(c)[Unchanged.]

A motion for rehearing or reconsideration of a motion mentioned in subrule (F)(4) does not extend the time for filing an application for leave to appeal, unless the motion for rehearing or reconsideration was itself filed within 21 days after the trial court decides the motion mentioned in subrule (F)(4), and the application for leave to appeal is filed within 21 days after the court decides the motion for rehearing or reconsideration.

A defendant who seeks to rely on one of the exceptions in subrule (F)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the register of actions of the lower court, tribunal, or agency, or other documentation showing that the application is filed within the time allowed.

(5) [Unchanged.]

(G) [Unchanged.]

Staff Comment: The proposed amendment of Rule 7.204 of the Michigan Court Rules would make various technical changes. The proposed amendment of Rule 7.205 of the Michigan Court Rules would clarify how a motion for a new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief tolls the time within which to file an application for leave to appeal to the Court of Appeals.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2007, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2005-36. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 7, 2006

*Corbin R. Davis*  
Clerk